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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC HENRY GROSSE

Appeal 2009-005638
Application 10/805,889[1]
Technology Center 2100

Decided: July 1, 2010

Before JOHN A. JEFFERY, JEAN R. HOMERE, and JAMES R. HUGHES, *Administrative Patent Judges*.

HUGHES, *Administrative Patent Judge*.

DECISION ON APPEAL

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[1] Application filed March 22, 2004. The real party in interest Lucent Technologies, Inc. (Br. 1.)

STATEMENT OF THE CASE

Appellant appeals from the Examiner's rejection of claims 1-7, 12-19, and 24 under authority of 35 U.S.C. § 134(a). Claims 8-11 and 20-23 have been canceled. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's Invention

Appellant invented a communication apparatus and method for use in a wireless LAN (Wi-Fi) system that eliminates dual authentication requirements for users. (Spec. 1, ll. 6-10.) In one embodiment, the method establishes a connection between a user terminal and an enterprise network through a network access server that provides limited network access without the user terminal having to provide any identification authentication or any billing or payment information to the network access server. (Spec. 4, ll. 3-20.)[2]

Representative Claim

Independent claim 1 further illustrates the invention. It reads as follows:

> 1. A method for establishing a connection from a user terminal to a network through a network access server, the method comprising the steps of:

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[2] We refer to Appellant's Specification ("Spec.") and Appeal Brief ("Br.") filed March 20, 2008. We also refer to the Examiner's Answer ("Ans.") mailed July 1, 2008.

receiving a request from the user terminal to access the network with use of the network access server; and

providing limited network access to the user terminal through the network access server, without the user terminal having provided any authentication of an identity thereof to the network access server, and without the user terminal having directly provided any billing or payment information to the network access server,

wherein providing said limited network access comprises providing network connectivity through said network access server between said user terminal and one or more predetermined enterprise-authenticated hosts and not providing network connectivity through said network access server between said user terminal and network sites other than said one or more predetermined enterprise-authenticated hosts,

wherein said network access server is operated by a service provider, wherein said service provider has a pre-existing relationship with each of one or more known enterprises,

wherein said one or more enterprise-authenticated hosts consists of one or more VPN gateways associated with each of said one or more known enterprises, and

wherein each of said pre-existing relationships comprises an agreement that said limited network access provided to said user terminal incurs a charge billed by said service provider to a corresponding one of said one or more known enterprises.

References

The Examiner relies on the following references as evidence of unpatentability:

Deshpande	US 2002/0176579 A1	Nov. 28, 2002
Juitt	US 2003/0087629 A1	May 8, 2003

Rejection on Appeal

The Examiner rejects claims 1-7, 12-19, and 24 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Juitt and Deshpande.

Grouping of the Claims

Appellant argues independent claim 1 as representative of independent claim 13 and dependent claims 2-7, 12, 14-19, and 24. (Br. 8, 13.) Appellant does not separately argue any of the other appealed claims. (Br. 13.) We accept Appellant's grouping of the claims, and choose independent claim 1 as representative of Appellant's arguments and groupings. Accordingly, we treat Appellant's claims 2-7, 12-19, and 24 as standing or falling with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

ISSUE

Based on our review of the administrative record, Appellant's contentions, and the findings and conclusions of the Examiner, the pivotal issue before us is as follows:

Did the Examiner err in finding the Juitt and Deshpande references would have taught or suggested to an ordinarily skilled artisan allowing un-authorized and un-paid access by a user terminal only to a enterprise-authenticated host VPN gateway of an enterprise's VPN through a network access server operated by a service provider having a pre-existing relationship with the enterprise to bill the enterprise for the access?

FINDINGS OF FACT (FF)

Juitt and Deshpande References

1. We adopt the Examiner's findings regarding the Juitt and Deshpande references as our own. (Ans. 3-4, 6-10.)

ANALYSIS

The Examiner finds that the Juitt and Deshpande references describe each feature of Appellant's independent claim 1, and maintains that the claim is properly rejected as obvious over the reference combination. (Ans. 3-4, 6-10.)[3] Appellant, on the other hand, contends that "[n]either Juitt nor Deshpande, either alone or in combination, teach or suggest all of the limitations of either independent claim 1 or 13, . . . [i]n particular, neither of these references . . . teach or suggest allowing *un-authenticated and un-paid* access by a user terminal *only to an enterprise's VPN* through a network access server operated by a service provider." (Br. 8.) Appellant also contends that Deshpande does not teach or suggest "that 'said service provider has a pre-existing relationship with each of one or more known enterprises . . . , and wherein each of said pre-existing relationships comprises an agreement that said limited network access provided to said user terminal incurs a charge billed by said service provider to a corresponding one of said one or more known enterprises.'" (Br. 10-11, quoting Fin. Rej. at 5.) Appellant further contends that Juitt teaches away from Appellant's invention (Br. 8, 12), and that "one of ordinary skill in the art would not have any basis for combining [the references] in the manner

[3] The pages of the Examiner's Answer are not numbered, we therefore refer to the pages in the order in which they appear in the record for clarity.

the Examiner suggests at the time the invention was made" (Br. 12). Accordingly, we decide the question of whether the Examiner erred in finding the Juitt and Deshpande references would have taught allowing un-authorized and un-paid access by a user terminal only to a enterprise-authenticated host VPN gateway of an enterprise's VPN through a network access server operated by a service provider having a pre-existing relationship with the enterprise to bill the enterprise for the access.

After reviewing the record on appeal, we agree with the Examiner's findings with respect to the Juitt and Deshpande references, as well as the Examiner's conclusion of obviousness, and we find that the references describe the disputed features of Appellant's claim 1. We begin our analysis by construing Appellant's disputed claim limitations.

We adopt Appellant's proffered interpretation of the disputed claim limitations. Specifically, we find Appellant's claim, as construed by Appellant, recites allowing un-authorized and un-paid access by a user terminal only to a enterprise-authenticated host VPN gateway of an enterprise's VPN through a network access server operated by a service provider having a pre-existing relationship with the enterprise to bill the enterprise for the access. (Br. 8-13.)

We find that Deshpande describes users accessing a free WLAN hotspot (at no-charge) and accessing services and/or information from the hotspot (hotspot service provider) without providing authentication (identity or billing information) – "certain users/devices may be able to connect with and request or accept services from the hotspot service provider network without identification and/or authentication such as no-charge Internet access or location-based services supported by advertisements" (Ans. 7;

Deshpande ¶ [0025]). (Ans. 4, 7; Deshpande ¶¶ [0025], [0026], [0028].) Deshpande also describes users accessing an authentication server through the WLAN hotspot, and allowing access to additional services for authenticated users. (Deshpande ¶¶ [0020]-[0022], [0025]-[0028].) Deshpande further describes accessing a corporate (enterprise) private network (VPN) through the hotspot service provider network, and the business entity (enterprise) being billed for usage services by the hotspot service provider. (Ans. 4, 7; Deshpande ¶¶ [0025], [0026].)

We find that the Juitt reference describes network access by a user through a server (local gateway server) to an authentication server providing an authentication web page (i.e., an enterprise-authenticated host or VPN gateway). The access by the user is limited – limited only to accessing the authentication web page and/or server – "[t]he local gateway server 120 redirects all requests from the mobile device 100 . . . to the authentication web page" (Ans. 6-7; Juitt ¶ [0059]). (Ans. 3, 6-7; Juitt ¶¶ [0003], [0037], [0051], [0059], [0068], [0071], [0075], Fig. 1A.)

Thus, we find that the combination of the Juitt and Deshpande references describes each feature of Appellant's claim 1. The reference combination describes allowing user terminal access to a no-charge WLAN hotspot without providing identity or billing information, limiting such access only to an authentication server authentication web page (VPN gateway) through a local gateway (network access) server, and accessing a corporate VPN through the hotspot service provider network where the business entity is billed for usage services by the hotspot service provider. Accordingly, we find Appellant's claim 1 reads on the Juitt-Deshpande reference combination. We conclude, based on these findings, that

combining Deshpande's teaching of provide VPN access through a free WLAN hotspot with Juitt's limited access network is tantamount to the predictable use of prior art elements according to their established functions – an obvious improvement. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007).

We are not persuaded by Appellant's arguments against the combinability of the Juitt and Deshpande references. In particular, Appellant asserts that there is no rationale for combining Juitt and Deshpande – that "one of ordinary skill in the art would not have any basis for combining [the references] in the manner the Examiner suggests at the time the invention was made" (Br. 12). But, Appellant does not explain how or why a skilled artisan would be dissuaded from the combination. Contrary to Appellant's position (and assertions), the Examiner provides a detailed rationale for combining the Juitt and Deshpande references. (Ans. 4.) Specifically, that modifying Juitt's limited access network in order to provide VPN access through a free WLAN hotspot as taught by Deshpande "would have been obvious to one of ordinary skill in the art at the time the invention was made" because such an access mode would have been "useful to business employees that need access to a hotspot service provider's services for a business purpose without having to establish an individual subscription with that hotspot service provider" – i.e., that the additional functionality would have improved efficiency (avoiding individual subscriptions to the hotspot service provider, and billing services directly to the business entity rather than to the individual.) (Ans. 4.) Thus, we find that the Examiner articulates a rationale for combining the Juitt and Deshpande references based on "some rational underpinning to support the

legal conclusion of obviousness." *KSR*, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

We are also not persuaded by Appellant's argument that the Juitt reference "teaches away" from Appellant's invention. (Br. 8, 12.) We find that skilled artisans would not have been discouraged from following the path set out in Juitt and Deshpande, nor would they be led in a direction divergent from the path that was taken by Appellant. *See Kahn*, 441 F.3d at 990.

Whether a reference teaches away from a claimed invention is a question of fact. *In re Harris*, 409 F.3d 1339, 1341 (Fed. Cir. 2005). A reference may be said to teach away from the invention if the reference criticizes, discredits, or otherwise discourages modifying a reference to arrive at the claimed invention. *See In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004); *In re Haruna*, 249 F.3d 1327, 1335 (Fed. Cir. 2001); *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). "[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious." *KSR*, 550 U.S. at 416 (citing *United States v. Adams*, 383 U.S. 39, 51-52 (1966)). We will not, however "read into a reference a teaching away from a process where no such language exists." *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1364 (Fed. Cir. 2006).

Moreover, the Examiner provides detailed findings and conclusions with respect to the Juitt and Deshpande references. (Ans. 3-4, 6-10.) Appellant did not file a Reply Brief, nor did Appellant provide any persuasive evidence supporting the assertions of alleged error in the Examiner's positions. Accordingly, Appellant has not persuaded us to find

error in the Examiner's obviousness rejection of independent claim 1. As we explain *supra*, Appellant does not separately argue independent claim 13 or dependent claims 2-7, 12-19, and 24, and these claims fall with representative claim 1. Therefore, we affirm the Examiner's obviousness rejection of claims 1-7, 12-19, and 24.

CONCLUSIONS OF LAW

On the record before us, we find the Examiner did not err in finding the Juitt and Deshpande references would have taught or suggested to a skilled artisan allowing un-authorized and un-paid access by a user terminal only to a enterprise-authenticated host VPN gateway of an enterprise's VPN through a network access server operated by a service provider having a pre-existing relationship with the enterprise to bill the enterprise for the access. Thus, on the record before us, we find the Examiner did not err in rejecting claims 1-7, 12-19, and 24 under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's rejections of claims 1-7, 12-19, and 24 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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